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**IN THE SUPERIOR COURT OF THE STATE OF ARIZONA
IN AND FOR THE COUNTY OF COCHISE**

STATE OF ARIZONA,) Case No.: CR 2017-00516
v.)
Plaintiff,)
ROGER DELANE WILSON,) **MOTION TO DISMISS
SPEEDY TRIAL**
Defendant.)

) Assigned to Judge Conlogue

COMES NOW the defendant, ROGER DELANE WILSON, by and through his attorney, STEVEN D. WEST, and hereby moves for an order from this court dismissing this action with prejudice, based upon a violation of the defendant's right to a Speedy Trial. This motion is pursuant to Article 2, §24 of the Arizona Constitution and the Sixth Amendment of the United States Constitution, ARS §13-114, Rule 8.2 (a)(3)(A) of the Arizona Rules of Criminal Procedure and supported by the records in this case and the following memorandum of points and authorities.

STATEMENT OF FACTS

On July 3, 2018, the State filed its Notice of Speedy Trial Calculation, in response to Mr. Wilson's Notice of Speedy Trial Time Limits. In the State's Notice, it calculated that the new speedy trial deadline would have been September 11, 2018. As of the date of the filing of this motion, three hundred and five (305) days have transpired since that proposed speedy trial deadline.

Mr. Wilson asserts that the time limitations have run and this case should be dismissed pursuant to Rule 8.6 of the Arizona Rules of Criminal Procedure.

STATEMENT OF LAW

Mr. Wilson believes that his constitutional rights have been violated because the State has not tried him within 270 days of his arraignment and the length of the delay has not been reasonable. *Barker v. Wingo*, 407 U.S. 514, 92 S.Ct. 2182, 33 L.Ed.2d 101 (1972). Though the violation in the State is statutory; *State ex rel Berger v. Superior Court*, 111 Ariz. 335, 529 P.2d 686 690 (1974); as it relates to a specific time period, a criminal defendant's right to a speedy trial is protected by Article 2, § 24 of the Arizona Constitution and the Sixth Amendment to the United States Constitution.

The right to a speedy trial is a personal right and can be waived by a defendant. In the instant case, the defendant has not intelligently and knowingly waived any right. Furthermore, the statute allows the court on a motion of the defendant to dismiss the prosecution. The language of the statute indicates that the decision

whether to dismiss the action with or without prejudice, is in the discretion of the trial court. In *State ex rel Berger v. Superior Court, supra*, the Arizona Supreme Court held that the trial must dismiss the prosecution on the motion of the defendant if the time limits for trial were violated.

The United States Supreme Court has applied the Sixth Amendment requirement of speedy trial to the states. *Klopfer v. North Carolina*, 386 U.S. 213, 87 S.Ct. 988, 18 L.Ed.2d 1 (1967).

Rule 8.2(a)(3)(A) of the *Arizona Rules of Criminal Procedure*, provides the time limits which apply to speedy trial rights. That rule states:

Time limits

a. General. Subject to Rule 8.4, the court must try every defendant against whom an indictment, information or complaint is filed within the following time periods:

(3). Defendants in Complex Cases. No later than 270 days after arraignment if the person is charged with any of the following:
(A) 1st Degree Murder

WHEREFORE the defendant moves to dismiss this action with prejudice based upon a violation of the defendant's right to a Speedy Trial.

RESPECTFULLY submitted this 11th day of July, 2019



Steven D. West
Attorney for Defendant Wilson

Copy of the foregoing
mailed/delivered this date to:

Lori Zucco
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